IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

JAMES C. KIRKPATRICK, Secretary of State of Missouri, and NORMAN H. ANDERSON, Attorney General of Missouri,

Appellants,

and

F. V. HEINKEL, R. J. ROSIER, W. W. BECKETT, A. D. SAPPINGTON, L. O. WALLIS, MILLER HERN, HERMAN HETLAGE, HERMAN KERTZ, TURPIN YOUTSEY and GLEN MYERS,

Intervenor-Appellants,

vs.

PAUL W. PREISLER, LOUISE ERBE, BOSTIC J. FRANKLIN, LUCILE RIEDEL, DOROTHY CHILDS, SARAH RIFKIN, and MARTHA LEONARD,

Appellees.

Nos. 1116 & 1117.

**On Appeal from the United States District Court For the Western District of Missouri Central Division.**

## SUPPLEMENTAL REPLY BRIEF (RULE 41-5).

Subsequent to filing of Appellants' reply brief, there was promulgated the opinion of this court in **Brotherhood of Locomotive Firemen and Enginemen, et al. v. Chicago Rock Island and Pacific Railroad Company, et al.**, Nos. 16 and 18, October Term, 1968, (November 18, 1968; 37 Law Week 4032).

Appellants believe that the **Brotherhood of Locomotive Firemen** opinion supports their argument that the District Court for the Western District of Missouri improperly assumed the legislative role under the guise of judicial review when invalidating the 1967 Missouri Congressional Redistricting Act.

> "We think it plain that in striking down the full-crew laws on this basis, the District Court indulged in a legislative judgment wholly beyond its limited authority to review state legislation under the Commerce Clause. (37 Law Week 4034)
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> "This summary, taken from evidence heavily relied upon by the railroads and generally favorable to their position, leaves little room for doubt that the question of safety in the circumstances of this case is essentially a matter of public policy, and public policy can, under our constitutional system, be fixed only by the people acting through their elected representatives. **The District Court's responsibility for making 'findings of fact' certainly does not authorize it to resolve conflicts in the evidence against the legislature's conclusion or even to reject the legislative judgment on the basis that without convincing statistics in the record to support it, the legislative viewpoint constitutes nothing more than what the District Court in this case said was 'pure speculation'.**" (37 Law Week 4035) (Emphasis added)
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> "Although the railroads claim that other criteria could provide a more precise test of the situations where a larger crew is desirable, these other standards have inadequacies of their own, and are for the most part far too vague to provide a basis for a statutory classifica-

tion. **And in any event the courts may not force a state legislature to attain scientific perfection in determining the coverage of statutes of this type.** (37 Law Week 4036) (Emphasis added)

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"As we have said many times, Congress unquestionably has power under the Commerce Clause to regulate the number of employees who shall be used to man trains used in interstate commerce. **In the absence of congressional action, however, we cannot invoke the judicial power to invalidate this judgment of the people of Arkansas and their elected representatives as to the price society should pay to promote safety in the railroad industry.**" (37 Law Week 4036) (Emphasis added)

Appellants also understand the **Brotherhood of Locomotive Firemen** cases to be a ruling that in testing the constitutionality of a state statute, this Court, on appeal from a Federal District Court, will give the benefit of the doubt to the state legislature. In other words, the "findings of fact" by the District Court were given no especial deference or presumption of validity by this Court, but instead such was accorded the "findings of fact" by the Arkansas legislature. Appellants naturally urge a similar approach by this Court in the instant cases.

Respectfully submitted,

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